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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

FRANCISCO GIL,

Plaintiff,

v.

JAMES A. YATES, et al.,

Defendants.

CASE NO. 1:09-cv-00917-GBC (PC)

ORDER GRANTING PLAINTIFF’S MOTION
TO SERVE DEFENDANT BY CM/ECF

Doc. 59

ORDER DENYING PLAINTIFF’S MOTION
TO ORDER DEFENDANT TO DEPOSE
PLAINTIFF BY WRITTEN QUESTIONS OR
VIDEO IN MEXICO AND GRANTING
DEFENDANT’S REQUEST TO DEPOSE
PLAINTIFF AFTER MOTION FOR
SUMMARY JUDGMENT, IF NECESSARY

Doc. 61, 63, 67

ORDER DENYING PLAINTIFF’S MOTION
TO COMPEL AND MOTION TO EXTEND
DISCOVERY AND DISPOSITIVE MOTION
DEADLINES

Doc. 60, 62, 64, 68, 69, 70

ORDER DENYING PLAINTIFF’S MOTION
FOR EXTENSION OF TIME TO RESPOND
TO MOTION FOR SUMMARY JUDGMENT,
AS PREMATURE

/ Doc. 71

On May 26, 2009, Plaintiff, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983, alleging he was found guilty of possession of a controlled substance when he should have been charged with possession of a controlled medication. Doc. 1. On September 2, 2011, the Court ordered this action to proceed on a cognizable

1 Fourteenth Amendment due process claim against Defendant J. Woodend, and dismissed all
2 remaining claims and defendants. Doc. 41. On January 30, 2012, the Court issued a discovery and
3 scheduling order, setting a discovery deadline of September 30, 2012, and a dispositive motion
4 deadline of December 10, 2012. Doc. 51. On August 10, 2012, the Court granted Plaintiff's motion
5 to extend the discovery deadline to November 14, 2012. Doc. 58. The Court also extended the
6 dispositive motion deadline to January 24, 2013. *Id.*

7 On August 29, 2012, Plaintiff filed one (1) motion to serve Defendant by CM/ECF since
8 Plaintiff is sending mail from Mexico; two (2) motions for Defendant to depose Plaintiff by written
9 questions or video in Mexico; and three (3) motions to extend the discovery and dispositive motion
10 deadlines. Docs. 59-64. On October 4, 2012, Defendant filed a response to Plaintiff's six (6) motions
11 and a request to depose Plaintiff following disposition of a motion for summary judgment, if
12 necessary. Doc. 67. On November 7, 2012, Plaintiff filed a motion to extend discovery and
13 dispositive motion deadlines, a motion to compel, and a motion that the Court grant his motions.
14 Docs. 68-70. On December 3, 2012, Plaintiff filed a motion for extension of time to respond to any
15 motion for summary judgment. Doc. 71. On December 5, 2012, Defendant filed an opposition to
16 Plaintiff's motion to compel. Doc. 72. This matter is deem submitted pursuant to Local Rule 230(1).

17 First, Defendant does not object to Plaintiff serving him through CM/ECF. *See* Def. Resp.
18 at 3-4, Doc. 67. Second, Plaintiff moves to compel discovery, but Defendant has complied with all
19 discovery requests. *Id.* at 2; *see also* Def. Opp'n Mot. Compel at 2, Doc. 72. Third, Plaintiff does not
20 provide good cause to further extend the discovery and dispositive motion deadlines. *See* Docs. 60,
21 62, 64, 68. This case has been pending since 2009, and the Court already granted Plaintiff's motion
22 to extend the discovery deadline from September 2012 to November 2012. Plaintiff states the Court
23 should extend the discovery and dispositive motion deadlines because Defendant has failed to
24 comply with discovery. Doc. 62, 68. However, the Court has found that Defendant properly
25 responded to Plaintiff's discovery requests. *See supra*. Moreover, in Plaintiff's premature motion for
26 extension of time to respond to Defendant's [non-pending] motion for summary judgment, Plaintiff
27 acknowledges receipt of Defendant's response to his motions and does not renew his motion to
28 extend the discovery and dispositive motion deadlines. *See* Pl. Mot. EOT at 1-2, Doc. 71. Plaintiff

1 also acknowledges the delay in receiving correspondence in Mexico. *Id.* Fourth, the Court will not
2 order Defendant to conduct a deposition by video or questions, as Defendant has submitted a lengthy
3 declaration to the Court regarding the difficulty in obtaining such a deposition. *See* Def. Resp. Decl.
4 Hung, Doc. 67-1. Finally, Defendant moves to take Plaintiff's deposition following the motion for
5 summary judgment, if necessary. *See* Def. Resp. at 1-3, Doc. 67. Defendant states that his motion
6 for summary judgment will be based on Plaintiff's alleged admission of guilty in the Rules Violation
7 Report and his unsuccessful petition for writ of habeas corpus, based on allegations of due process
8 for the same hearing at issue in this case. *Id.* at 3.

9 Based on the foregoing, it is HEREBY ORDERED that:

- 10 1. Plaintiff's motion to serve Defendant by CM/ECF is GRANTED;
- 11 2. Plaintiff's motion to order Defendant to depose Plaintiff by written questions or
12 video in Mexico is DENIED;
- 13 3. Defendant's motion to depose Plaintiff, if necessary, after the Court decides the
14 motion for summary judgment is GRANTED;
- 15 4. Plaintiff's motion to compel is DENIED;
- 16 5. Plaintiff's motion to extend the discovery and dispositive motion deadline is
17 DENIED; and
- 18 6. Plaintiff's motion for extension of time to respond to any motion for summary
19 judgment is DENIED, as premature.

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22 IT IS SO ORDERED.

23 Dated: January 2, 2013


UNITED STATES MAGISTRATE JUDGE